

# **Exhibit 34**

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL  
5 vs. TRIAL - DAY 23  
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** MARCH 14, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ  
Special Prosecutor  
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON  
Special Prosecutor  
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN  
Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG  
Attorney at Law  
18 On behalf of the Defendant.

19 JEROME F. BUTING  
Attorney at Law  
20 On behalf of the Defendant.

21 STEVEN A. AVERY  
Defendant  
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1                   2:25 and see how you are doing.

2                   (Recess taken.)

3                   (Jury present.)

4                   THE COURT: Mr. Buting, at this time you  
5                   may begin the defense closing.

6                   ATTORNEY BUTING: Thank you, Judge. Good  
7                   afternoon, ladies and gentlemen. This is the first  
8                   time I have actually had a chance to talk to you. I  
9                   have sort of been talking at you as we walk by the  
10                   witnesses for 6, 5 weeks, whatever. And I'm  
11                   really -- I feel honored and privileged to do so,  
12                   just as I am honored and privileged to defend  
13                   Mr. Steven Avery here, in this very, very serious  
14                   case.

15                   Let me make one thing very clear, right  
16                   here at the outset. We do not and have never  
17                   claimed that the police killed Teresa Halbach.  
18                   But in that respect they have that in common with  
19                   Steven Avery. However, the person or persons who  
20                   did kill Teresa, knew exactly who the police  
21                   would really want to blame for this crime.

22                   And they were aided in that respect, by  
23                   widespread media publicity as early as Friday  
24                   morning, November 4th, the very morning after the  
25                   day she was first reported. Widespread publicity

1                   that identified Mr. Steven Avery as one of the  
2                   last people known to have seen her. And because  
3                   of who he is, that drew even more media attention  
4                   than perhaps it might otherwise have. And the  
5                   focus was on Mr. Avery, rather than one of the  
6                   other customers that she saw that day.

7                   And this was the very same Steven Avery  
8                   who was suing the Manitowoc County and the  
9                   Sheriff's Department, with a lawsuit asking for a  
10                  whole lot of money, for the wrongful conviction  
11                  and all the years in prison that he spent, from a  
12                  1985 wrongful conviction.

13                  I believe that when the Manitowoc  
14                  officers saw this, they very badly wanted to  
15                  believe that he was guilty and that this was  
16                  their way out. And that from that point forward,  
17                  that they had this investigative bias, focused on  
18                  Steven Avery, that was, then, skillfully  
19                  exploited by the real perpetrator of this crime.

20                  Now, from the very beginning, Steven  
21                  Avery has proclaimed his innocence in this case.  
22                  He told that -- everybody that had a camera,  
23                  anybody who talked to him, that he was not  
24                  guilty, and that he was being framed. That the  
25                  police planted his blood.



1                   Now, we have offered a theory of  
2 defense. And that's what it is, it's a theory.  
3 Because if someone frames you, you are obviously  
4 not there to see how, exactly, it happened;  
5 where, how, when, the kinds of things that  
6 Mr. Kratz is going to argue we haven't presented.  
7 There is no videotape showing how this was done.  
8 There's no cop who, in a *Perry Mason* moment,  
9 breaks down on the witness stand and says, yes, I  
10 did it, I did it, you got me. This is real life,  
11 that doesn't happen.

12                  You are entitled to reasonable  
13 inferences, however, and we're entitled to the  
14 inferences that can be drawn from circumstantial  
15 evidence, just as much as they are. And so you  
16 ask yourself, what would it look like, what would  
17 it look like, what would a case look like if  
18 somebody was being framed.

19                  And we're going to do that for a little  
20 bit now. And I think when you do, you are going  
21 to see that it would look a lot like this case.  
22 You would look first and you would see, well,  
23 what about the lack of evidence, in areas that  
24 you would expect there to be evidence. And,  
25 then, you would look at the areas where there

1                   appears to be evidence linking the person to the  
2                   crime and ask yourself why does all of that  
3                   evidence appear suspicious or unreliable.

4                   And we're going to go back and forth on  
5                   that a little bit, but those are the two main  
6                   areas I want to talk about first. Evidence  
7                   that's not there, that should be. And evidence  
8                   that is there that appears suspicious or  
9                   unexplained. And let me turn to that first.

10                  In fact, let me turn to what probably  
11                  is, at least on its face, the most damning piece  
12                  of evidence in this case, and that is, Teresa  
13                  Halbach's remains, found in the burn pit, outside  
14                  Mr. Avery's garage, trailer, whatever.

15                  We'll look at the -- what the evidence  
16                  shows first. We know that not all of her remains  
17                  have ever been found. I believe Dr. Eisenberg  
18                  said only 40 percent of her skeletal remains.

19                  We're not talking the rest, obviously, that you  
20                  would expect might be gone, but skeletal remains,  
21                  only 40 percent. Not because the other 60  
22                  percent gets burned up. No expert has ever come  
23                  into this court and said fire would consume bone  
24                  completely.

25                  What fire does, according to these

1 experts, is it goes through these phases of  
2 charred to ultimately calcined -- calcinated, I  
3 believe the word was. Sixty percent of it is  
4 missing. All right. That's -- That's peculiar  
5 to begin with. But, then --

6 Well, before I move off that, there's  
7 something else that's missing and that is,  
8 Mr. Kratz points out, well, the jeans, we found  
9 these rivets in this pair of jeans here. But  
10 they only found five of six, assuming that these  
11 are the same jeans, and these are just a  
12 representative example. But what did they not  
13 find, the biggest item of all, the button that  
14 closes the waist.

15 They have got magnets they are using  
16 through all this dirt. They are the sifting  
17 through every thing and they don't find this  
18 button anywhere. They don't find her house keys  
19 anywhere, her work keys anywhere. They find one  
20 single key, which we'll certainly talk about.

21 But most importantly, all the experts  
22 agree, these bones were moved. And I have got to  
23 tell you, we have been here, now, for five weeks  
24 and we have still not heard any explanation from  
25 this side about how that happens.

1                   In fact, we haven't heard any  
2 explanation about a lot of things. We have heard  
3 manner and cause of death, but that's not really  
4 how Teresa Halbach was killed, or even where  
5 Teresa Halbach was killed.

6                   Unfortunately, from my standpoint on  
7 this point anyway, the State gets to go last.  
8 This is called sandbagging. This is where we  
9 don't get to respond to the theory or the  
10 argument that they have been harboring all this  
11 time and haven't told you folks either. So they  
12 are going to get up here after Mr. Strang and I  
13 are done and they are going to say, hey, this is  
14 the explanation, take our word for it. And we  
15 don't -- of course, don't have a chance to  
16 respond.

17                  Well, I'm going to trust that between  
18 the 12 of you, ultimately 12, you will be able to  
19 answer those questions that they raise. You will  
20 be able to pick apart, as well as I can, whatever  
21 theory they come up with, because we have not  
22 heard any yet.

23                  The bones were moved. The question is,  
24 were they moved to Mr. Avery's burn pit, or were  
25 they moved from Mr. Avery's burn pit. The State

1           would have you believe that the original site of  
2           burning was the burn pit, behind his garage. But  
3           they have offered no explanation for why bones,  
4           human bones, would be found in the Janda burn  
5           barrel, some 150 feet, or whatever it is, away,  
6           in the other yard.

7           And Dr. Eisenberg told you -- By the  
8           way -- I can't believe I forgot this -- there's a  
9           third site. There's actually three different  
10          sites where human, or possible suspected human  
11          bones were found. Clearly identified human bones  
12          were found in the burn pit. And clearly  
13          undisputed human bones were found in the burn  
14          barrel.

15          But there's also this mysterious quarry  
16          site, a quarter mile or so away that -- You will  
17          have to forgive me, but I'm not as  
18          technologically savvy as Mr. Kratz, and so we're  
19          going to be using the E<sub>L</sub>MO instead of a laptop.  
20          But this is -- this is the map that was shown to  
21          you. This is the diagram that was created by  
22          Mr. Austin, with the assistance of Dr. Eisenberg.

23          This flag down here, is the third site,  
24          where pelvic bones were found, according to  
25          Dr. Eisenberg. They were sent to the FBI to do

1                   mito-typing (phonetic). We did a stipulation  
2                   that nothing could be determined from them. But  
3                   what she said was, all three locations where  
4                   bones were found, or possible human bones in the  
5                   case of the quarry, were all burned to the same  
6                   degree, same amount of calcination.

7                   So there is a similarity here that  
8                   continues forward through all of them. And, very  
9                   important, no evidence of more than one body. I  
10                  don't even know if there are other bodies missing  
11                  in Manitowoc County, or people missing, but in  
12                  this instance, Dr. Eisenberg concluded, and  
13                  Dr. Fairgrieve agreed, no evidence of more than  
14                  one body. So we have got these bones in three  
15                  different locations.

16                  Now, curiously, you have never seen a  
17                  photograph of what this site looks like, or what  
18                  the bones looked like, and neither have I. And  
19                  neither has, I assume, any of the prosecution  
20                  team because, for some curious reason, no  
21                  photographs were taken of that site.

22                  The method of recovery in this case was  
23                  not skillfully done, as Mr. Kratz tried to argue,  
24                  by these experienced arson experts. This  
25                  investigation needed a forensic anthropologist to

1                   be called to that scene, before anything was  
2                   touched. And Dr. Fairgrieve explained why.

3                   Dr. Eisenberg admitted that by the time  
4                   she got the bones, she was unable to determine  
5                   some important information about its location,  
6                   how it was sited. And not only was nobody called  
7                   to the scene, but no photographs.

8                   Have you seen one photograph of any of  
9                   those bones in the burn pit, in this location,  
10                   before it's picked up? One photograph? No, you  
11                   see boxes of bones, tables where they are thrown  
12                   out. You don't see them in their site. And  
13                   Dr. Fairgrieve explained to you why that's  
14                   important, especially important, if you're going  
15                   to try and answer the question of, was that the  
16                   burn site.

17                   Dr. Fairgrieve is probably the expert in  
18                   the world, or at least in this North America, on  
19                   the forensic identification and interpretation of  
20                   cremains, much more experienced than  
21                   Dr. Eisenberg in this area. I don't have a  
22                   problem with Dr. Eisenberg; she's a fine person,  
23                   and a fine anthropologist.

24                   But Dr. Fairgrieve has much more  
25                   experience in the field, dealing with cremains.

1           He's written a book that's coming out soon. He's  
2           worked for the Crown all of his life. This is  
3           the first case he's ever testified for the  
4           defense. So this is not some paid defense expert  
5           that we have just brought in here to try and --  
6           try and do a smoke screen or something.

7           This is a world renown expert. And what  
8           he says is, he's had a lot of cases, or he's been  
9           called in and that very question has been  
10           presented, the bones were moved, where is the  
11           original site. Was it over here, or was it where  
12           the bones were found.

13           Dr. Eisenberg says, you have to listen  
14           carefully to her opinion, she concluded -- First  
15           of all, she could not rule out other possible  
16           burn sites, but her opinion was that it was most  
17           likely the original site was behind the garage.  
18           And that was based on the fact that most of the  
19           bones that were recovered were found in that  
20           location, that she would have expected more  
21           breakage, and that she found a lot of small  
22           delicate type of bones in that area, and so,  
23           therefore, she concludes this must be where the  
24           burn took place.

25           But Dr. Fairgrieve told you, that from

1                   his own case experience, real world case  
2                   experiences, he has found the tiniest bones in  
3                   the human body, the little bones in your middle  
4                   ear. He has found those moved into the secondary  
5                   site, not at the original burn site.

6                   And he told you something else that,  
7                   frankly, just makes common sense. In his  
8                   experience, where the majority of the bones are  
9                   found, that's the location where the bones were  
10                  moved to. Why? Why does that make common sense?  
11                  Because if you're -- if for whatever reason you  
12                  are trying to disguise the original site where  
13                  the burn took place, and you are going to plant  
14                  them, or put them some place else, of course you  
15                  are going to move as many of them as you can to  
16                  the second location. That makes common sense.  
17                  It would make perfect sense. And it fits with  
18                  Dr. Fairgrieve's own real case experience.

19                  The other thing Dr. Fairgrieve said is  
20                  that, had an expert been called to the scene, a  
21                  real forensic anthropologist, you can determine  
22                  things about that. I believe he talked about a  
23                  case where he was able to tell that this was the  
24                  first, the original spot of burning, because  
25                  there was some anatomically connected bones.

1           Even though burned, they are close together,  
2           anatomically, so you can tell that's where they  
3           were burned. If you moved them, they would fall  
4           apart and they would be rearranged.

5           Unfortunately, Dr. Fairgrieve, again, he  
6           didn't go out on a limb. He said, I cannot tell  
7           you for certain, where the original burn site is,  
8           nobody can, because of the collection effort.

9           And I'm not faulting these officers,  
10          there's nothing deliberate going on here. They  
11          probably never encountered a case like this  
12          before. And what they should have probably done  
13          is just put a tarp over it. Instead, Agent  
14          Sturdivant recalls -- I think it took five hours  
15          before Mr. Ertl to come to the scene. And it's  
16          already starting to get towards dark, 3:00, 3:30  
17          or something. So they're hurriedly trying to get  
18          as much as they can, working up to dark, until it  
19          gets too dark, without light.

20          It's not that they deliberately  
21          destroyed the evidence at the scene, but by  
22          moving it without the kind of knowledge -- Well,  
23          you have seen archaeologists on TV and in movies,  
24          you know how they do it, how they move very  
25          carefully with brushes. They want to make sure

1           that they can determine exactly where the  
2           location of these bones are. Because, if they  
3           are not in any kind of anatomical connection,  
4           that tells you something.

5           So, Dr. Fairgrieve -- I'm sorry --  
6           Dr. Eisenberg tells us that these bones were  
7           found in the burn barrel. Zoom in first so you  
8           can read the top. This is Exhibit 401. Evidence  
9           Tag 7964, she told you was bones recovered from  
10           one of the four Janda burn barrels that were  
11           located.

12           She finds long bone shafts, metacarpal  
13           fragments, vertebral -- vertebral fragments, and  
14           a scapula fragment. And the helpful little  
15           diagram here describes where you would find these  
16           in your body. Now, obviously these are scattered  
17           all over ones skeleton. It's not like somebody  
18           dismembers an arm and burns that in the burn  
19           barrel and you would expect to find only those  
20           items. These were scattered and we'll talk about  
21           why in just one second.

22           I think this was -- This is Exhibit 402,  
23           the pelvic bones that were found in the quarry.  
24           Now, again, possible, I'm not going to overstate  
25           here. She was not conclusively able to determine

1                   that they were human, but they were all burned to  
2                   the same degree. And she certainly could not  
3                   rule it out.

4                   What explanation is there for finding  
5                   scattered bones of Teresa Halbach in the burn  
6                   barrel and in the burn pit. I'm going to propose  
7                   one possible theory, there could be others. You  
8                   may come up with others on your own. But I want  
9                   to show you, first, one of the instructions the  
10                  judge read you that's in your packet.

11                  Focusing here on the reasonable  
12                  hypothesis. If you can reconcile the evidence  
13                  upon any reasonable hypothesis, consistent with  
14                  the defendant's innocence, you should do so and  
15                  return a verdict of not guilty.

16                  I suggest that a reasonable hypothesis  
17                  is that somebody else burned Teresa Halbach's  
18                  body elsewhere, maybe in the quarry, maybe  
19                  somewhere else. And then they used that burn  
20                  barrel that was found on the Janda's property as  
21                  a container to transport the remains, as many as  
22                  they could scoop in, to Mr. Avery's backyard.

23                  And they dump it in the burn pit, or  
24                  scatter it about, whichever, think that they've  
25                  got it all, turn it back over. And think about

1                   how heavy these burn barrels are, you are not  
2                   going to be able to lift them up and turn them  
3                   upside down as easily as you would be tipping  
4                   them over. And they inadvertently leave a few  
5                   behind. This is most likely happening in the  
6                   dark.

7                   And the barrel gets, then, placed over  
8                   on the Janda property, along with the other three  
9                   that were there, and so there's four barrels  
10                  found. That explains why there's scattered bones  
11                  from all over, skeleton, found in the barrel.  
12                  Explains why most of them are there in  
13                  Mr. Avery's. And explains why any would be found  
14                  in the burn barrel at all.

15                  If Mr. Avery wanted to get rid of the  
16                  bones, from his burn area, he would not put a  
17                  scattered few in someone else's burn barrel and  
18                  leave all the rest behind. That's not making  
19                  sense. It doesn't make sense. No one would do  
20                  that.

21                  One other little interesting bit of  
22                  testimony that almost slid by me, actually, was  
23                  Mr. Dassey, Bobby Dassey's testimony. Sometimes  
24                  the truth comes out in little dribs and drabs  
25                  when people aren't expecting it. And on direct

1 examination, as Mr. Kratz, I believe it was, was  
2 trying to lead Mr. Dassey through a number of  
3 photographs.

4 He asks him about the burn barrels that  
5 your mom has out back. And Bobby says, we have  
6 three. And then they try to correct him, and  
7 he's like, I thought we had three. And yet four  
8 are found on November 5th.

9 Where did that fourth one come from? I  
10 submit it was the transport item used, perhaps  
11 picked up, used to transport the bones and then  
12 placed over where the others would -- where the  
13 others were.

14 Let me tell you something about who  
15 another possible suspect is. It may not, but  
16 it's a reasonable hypothesis to explain the bones  
17 the way they are. Now, when you realize -- The  
18 reason I'm spending some time on this, is when  
19 you realize that this is what may have happened  
20 here, then you realize why it's so important.

21 Because if that body was burned  
22 elsewhere and then moved and dumped on  
23 Mr. Avery's burn pit, then Steven Avery is not  
24 guilty, plain and simple. Because no one would  
25 burn a body somewhere else and then move the

1 remains and dump them in your own backyard. No  
2 one would do that.

Now, that's why the State has gone to such trouble avoiding the fact that the bones were moved, that's why you heard nothing about it here. Because it does not fit with their theory that Avery is guilty. They know that if you come to believe that there is reasonable doubt about whether those bones were moved to Mr. Avery's backyard, then you are going to find him not guilty.

20                   If someone is framed, they are not going  
21                   to be there. They are not going to see how  
22                   exactly it is done, but this is consistent with  
23                   the evidence, I submit.

Now, let's turn from the evidence that appears to be incriminating, but is suspicious.

1           Let me turn for a moment to some of the evidence  
2           that is lacking, that you would expect to find,  
3           if Mr. Avery was really guilty.

4           There was blood identified in the RAV4,  
5           that is, Mr. Avery's. And I don't know why,  
6           frankly, we went through this exercise in  
7           statistics in figuring out what a billion means,  
8           when we're not, we've never challenged that. We  
9           don't challenge that -- whether his profile --  
10           when they come in and they say this is his blood,  
11           this is not his blood, or whatever, there is no  
12           dispute on that.

13           The question is, how did that blood get  
14           there. And as you think, again, what a case  
15           would look like if someone is framed, this is  
16           very important as well. Because in the RAV4,  
17           they find five, ultimately six stains, I believe,  
18           which they theorize must have come from an  
19           actively bleeding person, which means, the person  
20           was not wearing gloves, and yet, they find no  
21           fingerprints.

22           Why, because fingerprints are very  
23           difficult to plant. Can't say it's never been  
24           done, but it's extremely difficult to plant  
25           someone's fingerprints. Much easier to plant

1 someone's blood, if you can get ahold of some.

2 So that right there is peculiar.

3 Now, is it because he wiped off his  
4 fingerprints, took the time to wipe off all his  
5 fingerprints, but missed the blood. Come on,  
6 that doesn't make sense at all. Besides, we know  
7 that there are eight unidentified fingerprints,  
8 at this moment, that were found on that vehicle,  
9 including some very incriminating locations.

10 I went through it with Mr. Riddle.

11 Right on the back rear cargo door of the RAV4 --  
12 which of course I don't have -- right where you  
13 would expect, if somebody is opening that door to  
14 put a body in, they are going to find your  
15 fingerprints, if you're not wearing gloves. And  
16 if you're bleeding you're not wearing gloves.  
17 You can't be. You can't have it both ways.

18 I would also point out, Dr. --

19                   Mr. Riddle, I asked him, well, you took the  
20                   fingerprint standards of Lieutenant Lenk and  
21                   Sergeant Colborn. You know what the defense here  
22                   is. You know what we have been accusing them of  
23                   for the last month or more. Did they ask you to  
24                   compare these unidentified latents that were  
25                   found on Teresa Halbach's vehicle with Sergeant

1 Colborn or Lieutenant Lenk's standards, to see if  
2 you could rule them out, or match. The answer,  
3 no. Why, because they don't want you to know.

4 You cannot open this vehicle without  
5 touching that latch. And this is where he said  
6 he found them, the fingerprints. There, there,  
7 and there. Riddle also found them on the hood.  
8 Isn't that interesting. He says the lifting up  
9 of the hood has been a big part of the State's  
10 case. No one has compared those to Lenk and  
11 Colborn.

12 The other thing that's kind of curious  
13 is that no one at the scene sees any blood in the  
14 vehicle. Granted it's -- part of the windows are  
15 tinted, and it's -- but it's not dark. This  
16 vehicle was found at 10:30, 11:00 a.m. in the  
17 morning, on a Saturday.

18 And I believe Mr. -- or Special Agent  
19 Fassbender, I believe he was the one, that says  
20 he came with his flashlight. Maybe that was  
21 Ertl. Was looking 5 or 10 minutes inside that  
22 vehicle and didn't see any blood. Now, maybe you  
23 won't see the blood on the black CD case, but if  
24 indeed the vehicle is locked, you might want to  
25 be looking inside to see if there's a key,

1                   wouldn't you think.

2                   You are going to be shining your  
3                   flashlight right there to see if maybe the key is  
4                   in the ignition, no one sees this rather peculiar  
5                   looking bloodstain that looks sort of like you  
6                   might get if you take a Q-tip and dab it.

7                   Doesn't look consistent with the State's theory,  
8                   as I understand it.

9                   And then you look at maybe the most  
10                  obvious lack of evidence. And that is the  
11                  complete lack of any blood or DNA of Teresa  
12                  Halbach anywhere inside Mr. Avery's entire  
13                  trailer and you heard what the police did with  
14                  that trailer. They peeled off the paneling, they  
15                  ripped up the carpeting.

16                  You heard Mr. Ertl talk about how in one  
17                  instance he was familiar with, the suspect had  
18                  cleaned up the carpet with carpet cleaner and it  
19                  wasn't noticeable. When they peeled the carpet  
20                  back, it had soaked through to the pad. Well,  
21                  the police were at least smart enough to look for  
22                  that.

23                  Here no blood on that pad. No blood on  
24                  the carpet. No bloody bedding. Admittedly, you  
25                  could burn the bedding, sure. You could get rid

1 of the bedding. But no blood on the mattress.  
2 And there's no evidence that there was any change  
3 in the mattress. And there's no evidence that  
4 any mattress or box springs or any of that was  
5 burned.

6 No blood spatter on the walls or the  
7 ceiling. No bloody trail of a body being carried  
8 out of that bedroom into the garage or into the  
9 burn pit. Nothing on the carpet. Nothing on the  
10 back stoop, the deck, anywhere. No scratches on  
11 the headboard. No rope fibers on the headboard.  
12 Nothing that would indicate somebody restrained,  
13 struggling for their life, was murdered in that  
14 bedroom.

15 Why am I telling you this? The State is  
16 now saying he was -- I believe they are trying to  
17 argue that she was killed in the garage, although  
18 that's still not clear either. Why do I care  
19 about the bedroom, because the Judge has told you  
20 that you bring your common experiences too, you  
21 can rely on those common experiences. And one of  
22 the common experiences that you have all,  
23 unfortunately, been exposed to, was the pre-trial  
24 publicity in this case.

25 ATTORNEY KRATZ: Judge, I'm going to

1 interpose an objection. He is commenting on  
2 pre-trial or out of court statements, whether by  
3 counsel or by other witnesses. That is absolutely  
4 improper. That is not a common experience that they  
5 bring to the courtroom.

6 THE COURT: All right. Just a second, I'm  
7 going to excuse the jury for a couple minutes.

8 (Jury not present.)

9 THE COURT: You may be seated.

10 ATTORNEY BUTING: Judge, I'm actually  
11 bringing this up only to show them, and my next  
12 explanation would be how important it is not to leap  
13 to a quick judgment and why it's so important that  
14 they disregard all of that kind of information they  
15 may have heard before and focus on the evidence in  
16 this case. That's where I'm going with this.

21 ATTORNEY BUTING: That's correct. That's  
22 all I intend to say about it.

23 THE COURT: Mr. Kratz.

24 ATTORNEY KRATZ: When he starts with,  
25 unfortunately, you were exposed to information, he

1 is pre-supposing, first of all, that they know that.

2                   Secondly, Mr. Strang and Mr. Buting, in  
3                   jury selection, referred in great detail to out  
4                   of court statements in this particular case.

5                   But, third, and most importantly, the  
6                   jury has already been instructed not to consider  
7                   anything that was outside the courtroom. So to  
8                   highlight some -- something they may have heard  
9                   on the news, or something earlier, is absolutely  
10                   improper and I'm suggesting that Mr. Buting knows  
11                   that.

12                   ATTORNEY BUTING: I disagree. This jury  
13                   was exposed to false, misleading information for  
14                   months. And it's not until they came into this  
15                   courtroom that they heard the other side. That's  
16                   the point -- this is the best example I can think of  
17                   on why a case has to be decided and tried in the  
18                   courtroom.

19                   The Court's instructed them. We talked  
20                   about it in voir dire. We couldn't ignore the  
21                   fact that at least three of these jurors who are  
22                   sitting here today came in saying, I think he's  
23                   guilty. They promised to put it aside, but  
24                   that's all I'm doing is reminding them of that.

25                   THE COURT: One of the problems, as I

1 recall, is that the jurors, and I don't have each  
2 individual juror's answer committed to memory, but  
3 it's my understanding that they were exposed to  
4 pre-trial publicity in varying degrees. For the  
5 most part we wound up with jurors who weren't as  
6 exposed to the publicity as some others. But I also  
7 agree that we do not have a jury composed completely  
8 of people who were not exposed to any pre-trial  
9 publicity.

10 I'm a little concerned that, even the  
11 reference to publicity, for the same reasons I  
12 expressed as one of the reasons for dismissing  
13 the false imprisonment charge is, references to  
14 it could possibly lead the jurors to talking  
15 about it in deliberations and that's something  
16 that I don't think we want.

17 ATTORNEY BUTING: I agree. And that's as  
18 far as I was going with it. I wasn't going to draw  
19 any more references to it, other than to remind them  
20 how I think this is the best example, now that they  
21 have been through the process, to understand why it  
22 is so important for them to only judge the case on  
23 the facts, not speculating.

24 THE COURT: All right. I'm going to ask  
25 you -- you can refer to speculation, but I'm going

1 to ask you to phrase it in some other way that  
2 doesn't involve referring to pre-trial publicity, in  
3 order to avoid the problems with it.

4 ATTORNEY BUTING: That's fine. I will just  
5 finish by saying, that this case is an example of  
6 why you can't leap to quick judgments and why you  
7 should base your decision on the evidence in court.

8 THE COURT: That's fine. Anything else,  
9 Mr. Kratz?

10 ATTORNEY KRATZ: I'm not sure how to  
11 un-ring that bell, Judge.

12 ATTORNEY BUTING: Well, I wish I could  
13 un-ring it too.

14 THE COURT: Both parties have made  
15 arguments about un-ringing bells. I don't think the  
16 comments that have been made thus far get us  
17 significantly into that problem to require  
18 corrective action. So as long as there's not going  
19 to be a reference -- any further reference to any  
20 pre-trial publicity, lets bring the jurors back and  
21 allow Mr. Buting to continue.

22 ATTORNEY BUTING: Thank you.

23 (Jury present.)

24 THE COURT: You may be seated. Members of  
25 the jury, we're hoping that our sound problems are

1 related to a bad battery, so the battery is being  
2 replaced. In a minute, we'll resume.

3 ATTORNEY BUTING: All right. Where were  
4 we. What I think this case is, is a good example of  
5 why it is so important that people not leap to quick  
6 judgments about a case, maybe decide something  
7 that's based -- that's not based on the evidence you  
8 hear in court. You promised, and I'm confident you  
9 all will decide this case based only on the evidence  
10 you have heard in court, and this case is a good  
11 example why.

12 Let's look at what else evidence -- what  
13 other evidence is lacking. Now, if the State's  
14 theory is that she was shot in the garage, where  
15 is her blood? None of her blood is found in that  
16 garage.

17 We have heard testimony about high  
18 velocity blood spatter that comes when someone is  
19 shot from a bullet. There's none on the floor.  
20 Maybe even more important, there's none on any of  
21 all that -- any of that clutter that you saw.  
22 When it's high velocity spatter, it can go  
23 anywhere.

24 How would Mr. Avery be able to clean up  
25 everything, not just on a floor, but every little

1           item. Because, remember, at least in March, they  
2           picked up and handled every single, and examined  
3           every piece of evidence. Every cooler, every  
4           box, every can, every piece of junk that we all  
5           have in our garage, they looked at. And that's  
6           where you would expect to find spatter that no  
7           one would be able to clean up, even if they tried  
8           to clean up.

9           Now, is there evidence that he did clean  
10          up at all? Well, his blood was found in the  
11          garage. Why is that? If he's cleaning up, how  
12          is it that his blood is found there. Is he able  
13          to see a blood spot and say, oh, that's Teresa  
14          Halbach's blood. Oh, that's mine, I can leave  
15          mine, I will just clean up hers. Come on.

16          They have you believe that -- I'm  
17          assuming he's going to get up here and say, this  
18          is what happened because, of course, we haven't  
19          heard it yet, that the bottle of bleach is so  
20          incriminating. I don't know anybody who doesn't  
21          have a bottle of a bleach somewhere in their  
22          house. And an important part is, it was in his  
23          house. They say it's in his bathroom, what they  
24          didn't tell you until I got up and cross-examined  
25          them, is that the bathroom is the laundry room.

1                   So even there they try and mislead you into  
2                   thinking something means more than it does. A  
3                   bottle of bleach found in ones laundry room means  
4                   nothing. And it means nothing in this case.

5                   And, by the way, if the theory is that  
6                   there's no blood of Teresa Halbach anywhere on  
7                   the floor of that garage, is that because he is  
8                   such a good cleaner, then why are there 10, 11  
9                   .22 shells laying all over the floor right in the  
10                   open. Don't you think if they are going to go to  
11                   the trouble of cleaning up the blood, after you  
12                   kill somebody, that maybe you might pick up the  
13                   shells that are right out there in plain view for  
14                   the police to find. Don't you think that would  
15                   be what you would do?

16                   So those are some examples of the kind  
17                   of evidence, that if someone is being framed, you  
18                   might expect to find -- you might expect to find  
19                   lacking, because it doesn't fit with the reality  
20                   of what would have happened if the crime actually  
21                   occurred as the State apparently alleges.

22                   We talked about one piece of  
23                   incriminating evidence and how that looked  
24                   suspicious. Let's look at maybe the biggest,  
25                   most glaring suspicious piece of evidence in this

1 case. The magic key, Exhibit A, in this theory  
2 that the police planted evidence in this case.

3 Because if you believe that those police  
4 officers put that key in his room, that they are  
5 capable of planting that kind of evidence to try  
6 and link him, then why not plant -- why couldn't  
7 they have also planted blood. If they go to that  
8 extent that they -- that they plant Teresa  
9 Halbach's key in his bedroom to try and convict  
10 him, then that's it, it's over, case over,  
11 because you can't rely on anything else they have  
12 given you.

13 Now, let's look at this key. First of  
14 all, why would he bring the key in his house and  
15 put it in his own bedroom. Why would you do  
16 that? If you still got the vehicle, and you  
17 still wanted somehow to use the key, to drive it  
18 some place -- by the way, why would you want to  
19 disconnect the battery, if you're still going to  
20 use the key? What good does the key do if the  
21 battery is disconnected? So that's a disconnect,  
22 no pun intended here.

23 But why wouldn't you just leave the key  
24 in the car? Why wouldn't you hide the key under  
25 the -- neath the car, or somewhere where you know

1                   it is? Why would you bring an incriminating item  
2                   like that into your own bedroom, especially since  
3                   you know, as of November 3rd, when Sergeant  
4                   Colborn comes to visit him, and November 4th,  
5                   when Lieutenant Lenk and Detective Remiker come  
6                   to visit him and all the television cameras are  
7                   there, that you are a person of interest, right?  
8                   You are not going to put the key in your bedroom.  
9                   Doesn't make sense.

10                  And, then, the key is not found until  
11                  the 7th search of that trailer. You already had  
12                  four grown men in that little trailer. I'm  
13                  sorry, in that little bedroom they had four men,  
14                  for three hours, on Saturday night, November 5th.  
15                  And they come in here and they try to tell you  
16                  that's not really a thorough search. Three hours  
17                  in a little bedroom with four men, is not enough  
18                  time to do a thorough search? Who are they  
19                  trying to kid here.

20                  And, then, it's not until November 8th,  
21                  when they have been in the bedroom, again, with  
22                  three men: Lenk, and Colborn, and Kucharski,  
23                  it's another hour or more before they find it  
24                  then. There's a common theme, by the way, that  
25                  we've been hearing in this case, whenever

1 something is mysteriously found much, much later  
2 when it should have been, but earlier searches  
3 didn't count, those were just cursory searches,  
4 three hours cursory searches.

11 Now, I submit that the reason it wasn't  
12 found in the first entry is because there was a  
13 watchdog along, Sergeant Tyson. The one thing  
14 that they did was, they say it's okay to use  
15 these Manitowoc officers for searches because  
16 we're going to have a Calumet person there with  
17 them to make sure nothing goes wrong.

1                   you need to have another officer from another  
2                   agency watching over them, babysitting them.  
3                   That is absurd.

4                   Lenk and Colborn volunteered for that  
5                   duty and they volunteered for a reason. But in  
6                   the first search Sergeant Tyson did his job. I  
7                   believe it when he says that he watched them. He  
8                   looked like a watchdog. He was watching them  
9                   like a hawk and he wasn't searching. That's  
10                   important too. They were doing the searching and  
11                   he was just doing the collecting. So the  
12                   opportunity wasn't there for Lenk or Colborn to  
13                   plant the key.

14                   And then they are in there again, very  
15                   briefly the next day, again, with Tyson. Note  
16                   that each entry they are -- they are -- each time  
17                   they go in there, they were with Tyson, except  
18                   for November 8th and they go in with Deputy  
19                   Kucharski, who tried to make light of it by  
20                   saying that, you know, the possibility of  
21                   planting is about as likely as aliens coming down  
22                   and planting it.

23                   But he had to admit, he was not told to  
24                   watch those officers. He was there with Lenk and  
25                   Colborn. He's told to search and that's what

1 he's doing, he's doing his job. And he's sitting  
2 on the bed, after one hour. In fact, I think he  
3 said he was getting almost done and took off his  
4 gloves. He's sitting here, going through this  
5 drawer.

6 Lieutenant Lenk is right here with his  
7 back to him, like this, crouched down on the  
8 floor, so he's not going see what's going on.  
9 Lenk gets up, walks out the door, comes back in a  
10 minute later, oh, my gosh, look at that, there's  
11 a key. Low and behold, it's in plain view.

1 plastic clip. Somehow bounces off the wall,  
2 turns around the corner and lands, what is it 90  
3 degrees from where it should be, where it would  
4 have fallen.

Now, here is something else. I want you to contrast what the State -- what kind of evidence the State has given you. In this case, we have been presented with a wooden gun rack, as an Exhibit No. 196. This has really been important in this case, hasn't it, this wooden gun rack. It's meaningless. They have got -- And we have a got a photograph of it too. We have the real thing and the photograph. What do you need this for? Why do need this for? Why is this in evidence. This is totally irrelevant. They have pictures to show the guns are on the wall, okay.

1                   They don't want you experimenting with  
2                   that bookcase and this key, because they know you  
3                   will see that it is incredibly improbable that  
4                   this key is going to find it's way out, the key,  
5                   the ring, the cloth fob, the plastic clip, and  
6                   not get hung up on anything. It's going to  
7                   bounce around like they say it will. So you ask  
8                   yourself why you haven't seen that, right there  
9                   in the property room. Nice picture of it.

10                  ATTORNEY KRATZ: Judge, I'm going to  
11                  interpose an objection. Counsel is suggesting that  
12                  only the State could have introduced that, instead  
13                  of the defense.

14                  ATTORNEY BUTING: State's burden.

15                  THE COURT: I'm over --

16                  ATTORNEY KRATZ: He's suggesting only the  
17                  State.

18                  THE COURT: This is closing argument, the  
19                  objection is overruled.

20                  ATTORNEY BUTING: While we're at it, while  
21                  we're talking about candor with the jury, I don't  
22                  know if you recall, but I do, in the opening  
23                  statements, these nice PowerPoint presentations that  
24                  Mr. Kratz has prepared, one of them he puts up there  
25                  in his opening statement and he shows this tailgate.

1                   Puts up a nice PowerPoint slide showing the rear of  
2                   the vehicle like this.

3                   And he's going through where Mr. Avery's  
4                   blood, DNA, was found on Teresa Halbach's  
5                   vehicle. And he's got one of his nice slick  
6                   arrows pointing right here with a circle. I see  
7                   that and I think, my gosh, I have been working on  
8                   this case for months, did I miss that; how could  
9                   I miss that the client's blood is supposedly on  
10                   the back tailgate. Well, when I looked more  
11                   carefully, and as we heard from Sherry Culhane,  
12                   he was wrong. There was no blood of Mr. Avery  
13                   ever found on the rear of that vehicle on the  
14                   tailgate. Now, Mr. Kratz is human, we all make  
15                   mistakes; I have certainly made plenty here. But  
16                   that's a pretty big mistake.

17                   The key, also, by the way, has no blood.  
18                   Remember, she swabbed it and the stains were  
19                   clean and it only has his DNA. And, frankly,  
20                   counsel misspoke when he said, it's always the  
21                   last person -- when you are talking about trace  
22                   DNA from the fingers, it's always the last person  
23                   that touches it that's going to be on there, not  
24                   what the testimony was as I recall it. Testimony  
25                   was, the last person may have more of it, but you

1 are going to find a multiple, most likely, at  
2 least two people. Particularly when it's an item  
3 like a key that someone handles every day and  
4 deposits their own DNA on.

5 And, finally, before we take a break  
6 here, the source of Mr. Avery's DNA in his house  
7 is plentiful. Toothbrushes, razors, all kind of  
8 personal items in ones home, if Mr. Lenk and  
9 Mr. Colborn wanted to put Mr. Avery's DNA on that  
10 key, that was easily available. It doesn't have  
11 Mr. Avery's fingerprints on the key; doesn't have  
12 any of Teresa Halbach's DNA on the key.

20 THE COURT: Yes. All right. Members of  
21 the jury, we'll take a break at this time. Again,  
22 do not begin your discussions of the case until all  
23 the arguments have been completed and the Court  
24 submits the case to you. You are excused.

25 (Jury not present.)

1 THE COURT: Counsel, can I see you briefly  
2 in chambers at the start of the break.

3 ATTORNEY BUTING: Sure.

4 (Recess taken.)

5 (Jury present.)

23 ATTORNEY BUTING: Thank you, Judge. Before  
24 I leave the magic key for a minute, I just want to  
25 make sure I was clear enough that, again, this is

her car key, that obviously she used every single day. It was Teresa Halbach's key.

And I believe Ms Culhane said she swabbed all the way around that whole plastic holder, all the way around it. Not just along one edge of it. And yet she found none of Teresa Halbach's DNA, not a shred of it. And found only Mr. Avery's DNA, as if somehow the key had been wiped clean and his DNA was placed on it. He certainly is not going to do that. He's not going to wipe off her DNA and leave his behind.

And as to the bookcase, why it's not here, think about, again, it's their theory, that this key could have found it's way magically out of that bookcase and into its position. Their burden of proof in the entire case, and also their theory to explain to you how this very unusual key materializes out of nowhere and yet it is not here.

All right. Now, let's look at another piece of evidence that initially appears, certainly incriminating, but as you look more closely, looks more and more suspicious. And that is, Mr. Avery's blood in the RAV4.

Keep in mind that we're talking about a

1                   very little amount of blood here. Mr. Kratz  
2                   maybe confused you when he made it seem like  
3                   there was a lot. Yeah, there's not one  
4                   microliter, but we're talking very small amounts  
5                   of blood. As a matter of fact, the photographs  
6                   that were taken by Mr. Groffy, before any swabs  
7                   were taken, before any of the blood is wiped off.  
8                   This is the front seat, I can barely see  
9                   anything, unless that -- if that's the spot of  
10                  blood, right there, that's awfully small,  
11                  particularly when you are talking about fabric.

12                  The CD case, can't even find any blood,  
13                  can't see any blood. I believe Mr. Stahlke must  
14                  have misspoke when he said it seemed like it was  
15                  covered, that there was lots of blood on it.

16                  The FBI guy who looked at it, the swabs,  
17                  we'll talk about that, Mr. -- Dr. LeBeau, later.  
18                  But he showed you pictures of those swabs and  
19                  there was hardly any blood on it. If fact, they  
20                  looked gray, like fingerprint dust, or something.

21                  So, really, we have this and this, which  
22                  Mr. Stahlke says is consistent with active  
23                  bleeding. It is also consistent with active  
24                  planting. So when I first saw this, I thought,  
25                  you know, what is the source of Mr. Avery's

1 blood.

2 Well, we have heard about how his -- he  
3 had blood in the bathroom. And so I looked at  
4 these pictures, these were pictures that I  
5 believe either Detective Remiker or Sergeant  
6 Colborn testified that they went around and took  
7 on Saturday night, at the apartment, before there  
8 was any kind of seizures of swabs.

9 The first thing you do when you go in is  
10 you take pictures and then you start collecting  
11 evidence. Well, you look at this particular  
12 swab, we'll do a close up on it. It's an awful  
13 odd looking blood drop, with a little whole in  
14 the middle, as if somebody would dab a Q-tip in  
15 it, that was my first thought.

16 And, then, the blood vial. And I offer  
17 that -- and we have offered that as a possible  
18 source of the blood that's found, Mr. Avery's  
19 blood that's found in the RAV4. It was in a  
20 public office, in an unsecured area; not in a  
21 vault where they keep locked up exhibits only;  
22 not down in the basement where they normally keep  
23 old files; but in that battered old cardboard box  
24 that we saw sitting in the Clerk's Office,  
25 because it was -- there were so many requests to

1           see it, from the media and the public, that that  
2           made it more convenient.

3           They kept no good log back then, of  
4           people who were asking to see files, see any  
5           file, that one notwithstanding. The clerk, Ms  
6           Zigmunt, later tightened that up in, I think it  
7           was October of '06, this past year. Now  
8           everybody has to sign in before they can look at  
9           any file. But back then she admitted that the  
10           deputy clerks would be more casual about it. And  
11           who would you be more casual about making someone  
12           sign in than a police officer, who you would  
13           normally trust.

14           So there would certainly be no reason  
15           for these clerks to take note or think that some  
16           police officer, Lieutenant Colborn, or Sergeant  
17           Colborn, I'm sorry, Lieutenant Lenk or Sergeant  
18           Colborn, would have any nefarious intent by  
19           looking at Mr. Avery's file. And that area of  
20           the file where it's kept is sort of screened off  
21           from the rest of the unit.

22           And probably more likely, though, is the  
23           after hours access that the deputies have. The  
24           Manitowoc Sheriff's Department is responsible for  
25           security in the courthouse so, understandably,

1                   they have master keys that fit all the doors.  
2                   And how difficult, really, would it be for  
3                   someone like Lieutenant Lenk or Sergeant Colborn,  
4                   veteran officers, to come in after hours, or on  
5                   Saturday morning, and get what they needed. I  
6                   submit it would be not difficult at all.

7                   Now, Mr. Kratz, I can hear him now, he's  
8                   going to get up here and say, where is the  
9                   evidence. This is all speculation. Where is the  
10                   evidence. As if he would expect anybody who was  
11                   being framed to have a videotape of the officer  
12                   taking the vial of blood and planting it.

13                   Or as if he expects one of these police  
14                   officers, in front of everybody, under oath, on  
15                   streaming video on the internet, to admit, oh,  
16                   yes, of course, I took the blood and planted it.  
17                   Yes, I would admit that if I did it. Sure, I  
18                   would go away to federal prison probably but,  
19                   yeah, rather than lie under oath, I would rather  
20                   go to prison than admit that.

21                   Come on. This is real life. It's not  
22                   TV. You can't expect a *Perry Mason* moment where  
23                   you're going to get somebody to admit, to you  
24                   guys, and everyone else in the world, that they  
25                   did this.

So what do we have, though. We have reasonable inferences that can be drawn and circumstantial evidence, just like they do.

The box, you have seen the video, I'm not going to go through all that again, but I want to just remind you, show you the box.

Evidence tape is very clearly cut, opened, and the box is resealed with nothing but a piece of scotch tape.

This one may show up a little better.

Inside the box was the styrofoam container, and it was opened by all of us together, which also had -- which also had evidence tape sealing it, right along here. And on the video, you could see very clearly that that was slit, as if by a razor or scissors, or something sharp. So that one would easily open this sort of clam shell styrofoam container, and there is the vial of blood.

The vial of blood has a hole, what appeared to be any way, a hole in the middle, right there, which is where professionals would gain access to the blood, if they need it. But this vial has something more, as even Dr. LeBeau admitted. This vial has blood in between the

rubber stopper and the glass, so that the experts  
who use these things all time, could say, even  
Dr. LeBeau, I believe is the one, who said this  
vial, clearly the top had clearly been taken off.

5 So, there's evidence that the box was  
6 unsecured and the top had been removed at some  
7 point. And the blood is still liquid. Can't  
8 really show you it in there, the way they have  
9 got it encapsulated in yet another glass tube.  
10 You can't really see it, but you did see, I  
11 think, in the video, as it was rocked back and  
12 forth, the blood was still liquid and, therefore,  
13 easily available to plant. And we're only  
14 talking about a few drops. That's all that's  
15 necessary to leave the amount of blood that they  
16 found in that RAV4, a few drops, that's all.

17 Now, Lieutenant Lenk, whose name keeps  
18 coming up at every important part of this case,  
19 had reason to know that that blood of Mr. Avery's  
20 was sitting in the courthouse. Because he was  
21 the evidence tech -- the whole head of the  
22 evidence department for Manitowoc. And he signs,  
23 in 2000 -- what's the date here -- 2002,  
24 September, he signed Exhibit 214, as the  
25 transmitting, or submitting officer to submit

1 these items to the Crime Lab.

2 Now, I'm not trying to mislead you here,  
3 these items do not include the vial that we're  
4 talking about. But they clearly show that these  
5 came from exhibits held by the court since the  
6 end of the trial. And yet Lieutenant Lenk would  
7 have you believe, in his testimony, that he had  
8 no idea that that 1985 court file had any kind of  
9 exhibits like that in there.

10 The one thing they did look for  
11 fingerprints on, they looked for Lenk and  
12 Colborn's fingerprints on the blood vial. No  
13 surprise there. Second nature with cops when  
14 they handle anything like that, a biological  
15 piece of evidence, they are going to put their  
16 gloves on. So, okay, they look there, don't find  
17 any. But, again, they're looking for something  
18 that they know isn't going to be there in the  
19 first place, and trying to present that as if it  
20 means something.

21 So then there's the question of the  
22 opportunity to plant blood. And that's why we  
23 heard all this testimony about the scene and  
24 whether it was secure or not secure. Well, keep  
25 in mind that that sheriff's department, even

1           though their bosses said, within 45 minutes of  
2           getting there, that we're turning over this  
3           investigation to Calumet, the one item, the one  
4           item on that 40 acre property that they knew was  
5           important, the main piece of evidence, was that  
6           RAV4.

7           And they kept their officers in control  
8           of it for four hours. Talk about the fox  
9           guarding the hen house here, ladies and  
10           gentlemen. Come on. Is that just a coincidence,  
11           or is that Lenk and Colborn having some influence  
12           here?

13           How carefully was it being watched?  
14           Mr. Kratz told you that it was being maintained  
15           very securely and carefully. Well, we heard that  
16           until Special Agent Fassbender arrived at 2:25,  
17           there was no log at all of who was coming and  
18           going, looking at this main piece of evidence  
19           that they knew about.

20           They rely on two civilians, Nikole and  
21           Pamela Sturm, to be their watch dogs, so they can  
22           see from this crusher, distance 369 feet, I think  
23           it was, Mr. Austin measured. And, you know, I  
24           don't fault the Sturms. I mean, its revision is  
25           history, for them to say that they were watching

1                   that carefully the whole time they were there,  
2                   that far away, to make sure nobody, even a police  
3                   officer, approached.

4                   Why would they care. Once they knew it  
5                   was Teresa's vehicle, you know, the sad news that  
6                   it was, that's where their attention would be  
7                   drawn. They weren't watching this to see who  
8                   approached the RAV4.

9                   And there was a tarp over the RAV4, for,  
10                  now, we find out, for an hour apparently,  
11                  according to the digital signatures that we can  
12                  find on digital photographs. And a tarp that's  
13                  built up in such a way that it's practically a  
14                  tent. That's not the best picture, but from a  
15                  distance, this large tented over object, being  
16                  very careful not to have the tarp touch the  
17                  sides, with a nice little opening here.

18                  Now, maybe that's not when it was  
19                  planted, but it's certainly an opportunity.  
20                  Probably more likely is that it's getting dark,  
21                  and while the officer -- I don't believe, by the  
22                  way, that there was any testimony that Mr. -- or  
23                  Sergeant Orth was seated where Mr. Kratz said he  
24                  was. But even notwithstanding that, what we did  
25                  hear was that there's other means of ingress and

1 egress to that property.

2 Sergeant Orth testified that while the  
3 officers were somewhere in this area, remember  
4 this picture was taken after the vehicle had been  
5 removed, but that there's -- there's ways in and  
6 out from the west. I will show you in a moment,  
7 if I can find the overhead.

8 A little farther up, one can see the --  
9 how the roads down here, we have lots of ways to  
10 get in and out that -- First of all, for someone  
11 to plant the vehicle. And, secondly, for anyone  
12 to approach it while it's there. And an even  
13 more distant shot that shows all the ways in to  
14 this plot of land.

15 So while maybe directly to the south of  
16 that berm it is not immediately accessible,  
17 there's all these other ways in from here, or  
18 from here. When somebody who knows the area,  
19 perhaps someone who's been a patrol sergeant for  
20 many years, knows the county like the back of his  
21 hand, is going to know how to get to that RAV4.

22 Then we have this whole question of  
23 whether the vehicle is locked or not. Well, the  
24 Sturms said they thought it was locked, but then  
25 when they were questioned more carefully it turns

1 out that Nikole didn't check the rear tailgate.  
2 She checked it with her sleeve, the other four  
3 doors, but not the rear tailgate.

4 If it was locked, by the way, who do you  
5 go to when you lock your keys out. Most of the  
6 time you go to call the cops. Who better knows  
7 how to open up a car, quickly, than police? So  
8 the fact that it was or wasn't locked isn't  
9 crucial in this case, in my estimation.

10 But on this evidence, it's not entirely  
11 clear, when it gets to the Crime Lab, it really  
12 is locked. You will have to rely on your memory  
13 for that, but I think the record is unclear,  
14 frankly.

15 There is also, I want to point out, all  
16 you would have to open, by the way, are two  
17 doors, to put the blood where it was found. The  
18 driver's side, you can reach everything in that  
19 front seat and that one rear passenger door. So  
20 you wouldn't have to have them all open and  
21 sitting in the car in order to do this.

22 And then we have the interesting  
23 circumstance of Lieutenant Lenk and his behavior  
24 on November 5th and since then, in which he  
25 testified, in a prior hearing in this case.

1           Lieutenant Lenk is the only officer, the only  
2           witness in this case who was -- who has lied  
3           under oath. He gave sworn testimony one day that  
4           he didn't get to this site until 6:30 or 7:00,  
5           when it is getting dark, but came in front of you  
6           today and says, again, under oath, that it was  
7           2:00.

8           Well, what happened in the interim? He  
9           forgot about the logs. And when you look at the  
10          logs, he signs out, but he never signs in.  
11          Fassbender had those logs starting at 2:25. So  
12          lo and behold, Lenk now appears on the scene at  
13          2:00, to explain why he never logged in. Because  
14          otherwise the alternative is, he comes at 6:30 or  
15          7:00 and evades the guard that's doing the log.  
16          That doesn't look good either.

17          So ask yourself, what evidence there is,  
18          what inferences you can draw from a witness who  
19          gives two different versions, under oath, about a  
20          critical point like this. His whereabouts, by  
21          the way, that entire day, he never writes a  
22          report.

23          So, I also expect, again, because they  
24          get to go last, I'm having to anticipate, and you  
25          may have to answer some other questions that they

1 raise. But I expect that they are going to say  
2 this would have to be this complicated wide  
3 ranging conspiracy in order to frame Mr. Avery.

4 Not true. Not true at all. This could be done  
5 by two officers, really one officer, the one  
6 officer who keeps coming up, Lieutenant Lenk,  
7 whose name is on the evidence transmittal from  
8 the 1985 case, just a couple years earlier.

9 Lieutenant Lenk, who shows up on  
10 November 5th without logging in. Lieutenant  
11 Lenk, who finds the magic key. Lieutenant Lenk,  
12 who four months later, four months after  
13 Manitowoc no longer is needed, with no legitimate  
14 reason, is back at that scene on March 1st and  
15 what's found the next day, the magic bullet,  
16 which we'll talk about in a moment.

17 Actually, let's talk about it now.  
18 Again, every time they try and -- Every time they  
19 find something that they should have found  
20 before, it was because, oh, that prior search was  
21 just for a missing person. We signed a search  
22 warrant affidavit in which we said we were  
23 looking for evidence of a homicide. But, oh, we  
24 were just looking for a missing person, we didn't  
25 know what we were looking for.

1                   They are in that garage on November 6th,  
2                   for an hour and 47 minutes, three officers. They  
3                   find 10 or 11 shell casings, but they found -- if  
4                   they saw a bullet, don't you think they would  
5                   pick up that bullet? Don't you think that might  
6                   be important?

7                   Now, where was it found? Right smack  
8                   dab in the middle, one of them. This is the  
9                   March 1st photo, but No. 9, right as you walk in  
10                  the door, the main overhead door, it's sitting  
11                  right there in a crack. Now, to you and I, that  
12                  may not look like much, but to an officer who's  
13                  looking for -- if they found .22 shell  
14                  cartridges, is going to be looking for a bullet,  
15                  that's going to be pretty obvious. But it's not  
16                  found until March 1st. And then the other, most  
17                  important one, is found back here, up against the  
18                  wall.

19                  Now, one or two things had to happen,  
20                  either they missed it, during the first search,  
21                  or the scene had been altered between the first  
22                  search and March 1st. And, in fact, we know  
23                  that's what happened. We had the officers  
24                  identify, look at this, there's a different car  
25                  in there, there's this big engine hoist.

1                   Mr. Avery wasn't altering it, but other people in  
2                   his family obviously had access, someone's car  
3                   was parked in there. Things probably moved  
4                   around, who knows.

5                   But then we have testimony from Rollie  
6                   Johnson, about his many gofer hunts. He says  
7                   that if you go out there now, when the snow  
8                   melts, you will find his .22 shells all over the  
9                   place, including right -- most likely in that  
10                  garage. His gun, his .22 and, yeah, those shell  
11                  casings were fired in that .22, from that .22,  
12                  you can tell that because of the way the pin  
13                  hits.

14                  But, according to Mr. Johnson, his --  
15                  the remnants of his firings, even years from now,  
16                  are probably still there. Especially if you  
17                  think about that, the Item FL, No. 23 that's  
18                  under the air compressor. That probably hasn't  
19                  been moved in years. Who knows how long that  
20                  bullet had been there.

21                  It didn't have Teresa Halbach's DNA on  
22                  it, which we will talk about it in a moment. And  
23                  that bullet is probably totally irrelevant to  
24                  this case. Just one of many residues left over  
25                  from Mr. Johnson's target practices and whatnot.

1                   I'm not sure it was entirely clear, so I  
2 just want to go over with you and make sure it's  
3 clear. The shell casings, we have two bullets  
4 and 11 shell casings. The shell casings,  
5 Mr. Newhouse was able to identify, came from that  
6 gun, but he can't say that the bullet, the  
7 ultimate bullet, FL, came from any of those shell  
8 casings. And he can't say that Mr. Avery, for  
9 that matter, ever handled any of them because  
10 nobody did any fingerprints of them.

11                  And, then, the second bullet, the one  
12 they showed you that's down in the crack, that  
13 was designated as Item FK, Mr. Newhouse said he  
14 could not match to the gun, the .22 caliber  
15 Glenfield Marlin that was found in Mr. Avery's  
16 bedroom. He said that all he could say was that  
17 it would come from a class -- gun of a similar  
18 class, which I think included even a pistol that  
19 we talked about, with a different brand name.

20                  But we know, that on that very property,  
21 the Avery 40 acre salvage yard area, there were  
22 other, at least one other, maybe two, .22  
23 Glenfield Marlin rifles. In Bobby Dassey's  
24 bedroom, is one of them, exactly the same model,  
25 one of the most common models in the world.



1 which is there's a lot of differences between  
2 those two fields of view. And that his opinion,  
3 that it came -- that they are one in the same,  
4 they came from the same rifle, is questionable.

5                   But, putting all that aside for a  
6 second, even if he is correct, that that Item FL  
7 that was fired from the .22 rifle that was  
8 found -- Rollie Johnson's rifle, found in  
9 Mr. Avery's bedroom, that still doesn't mean it's  
10 connected to this case with any relevance.

11 Look at first, Mr. Olson, who does the  
12 lead analysis from the fragments of the cranium  
13 bones that he found. He said it's 99 percent  
14 lead. Well, Mr. Newhouse, in his notes, and I  
15 talked to him about this as well, he made a point  
16 that this -- Remember he talked about the two  
17 kind of bullets, some which are lead and some  
18 which were coated.

1           Item FL. And he said, no, he wasn't asked to.

2           So without some kind of connection  
3           between Teresa Halbach and that bullet, the  
4           bullet has no relevance in this case. It's just  
5           a random fragment, that's found in an old garage,  
6           that means nothing.

7           And so we come to Sherry Culhane. Now,  
8           you know, one of the odd things about trying a  
9           case with this kind of publicity, where other  
10           people can watch at home, or wherever, is that  
11           you get some feedback about how you do. Some of  
12           it not so good. And some people told me maybe I  
13           was a little hard on Sherry Culhane.

14           And if you think that, you know, I  
15           apologize if I offended anybody with my  
16           cross-examination of her, but I ask you not to  
17           hold it against Mr. Avery. Because I have a job  
18           to do and as an advocate, I need to point out, if  
19           someone goes over the line and goes too far, you  
20           have to understand it.

21           Now, I don't have a problem with almost  
22           everything that Sherry Culhane did in this case,  
23           and I said so. I haven't been up here disputing  
24           her statistical calculation. I haven't disputed  
25           any of her -- the Power Points where she's lining

1 up the profile of one to the next.

2 And it's true that she did help  
3 exonerate Mr. Avery in 2003, although she sat on  
4 it for a year and he spent an extra year in  
5 prison, she did exonerate him by finding an  
6 exclusion and then a match to Mr. Gregory Allen.  
7 And we appreciate that. And I didn't mean to not  
8 appreciate that.

9 But I also pointed out, it's not like  
10 she's a defense witness either. She helped  
11 convict him in 1985, with this now discredited  
12 science of hair comparison analysis, where she  
13 rendered opinions to jurors just like yourself.  
14 So most of what she did in this case was fine; in  
15 fact, it was more than fine. Because it really  
16 excluded Mr. Avery from -- either Teresa Halbach  
17 from all these items, or Mr. Avery from the other  
18 items. Really the other way around, she's  
19 looking for Teresa Halbach's DNA in incriminating  
20 places. And she doesn't find it.

21 So I can imagine how frustrating it  
22 might be when you get a phone message that tells  
23 you this, early on, try to put her in his house  
24 or garage. Now, this is not blind testing, by  
25 any means. These agents are telling Ms Culhane

1 what they want. And this is November 11th.

2 Well, here it is, she's working on this  
3 bullet fragment now, in March. And she still has  
4 not found one item that links Teresa Halbach to  
5 Mr. Avery's house or garage. So she's got to  
6 feel some pressure. This is the biggest case of  
7 her career. The biggest case the Crime Lab has  
8 ever had: 380 items, 180, I think, submitted just  
9 to her unit.

10 It's almost five months late and nothing  
11 has been found. So when she gets this last  
12 bullet fragment, she recognizes, I think she  
13 said, it's a probative piece of evidence. She  
14 knew what it was. And when she gets this  
15 contaminated test, the pressure is on for her to  
16 go way out on a limb, farther than she's ever  
17 gone in her life. Never before has she ever  
18 asked to deviate from a protocol to make an  
19 inclusion, until this case.

20 Now, she probably convinced herself that  
21 it's okay because it's just in the control, who  
22 cares. There's no evidence that the bullet is  
23 contaminated, right? Well, we talked about that,  
24 what controls are, and why they have them, and  
25 how you can find contamination in controls very

1           easily, because if a control has anything but  
2           zero DNA, it's been contaminated.

3           What you can't tell is when a piece of  
4           evidence shows up with someone's DNA, you can't  
5           tell whether it's there because it has been  
6           contaminated or not. And so what you do is, you  
7           run a control. And the protocol says, if that  
8           control is contaminated, you toss it out, and  
9           that's the end of it. Because they know, from  
10           their own tests, that there's cross contamination  
11           that can occur from one evidence item to the  
12           next. And they can never rule it out if there's  
13           a contaminated control.

14           So where is Teresa Halbach's DNA coming  
15           from? Ms Culhane says, she's theorizing and she  
16           thinks, well, maybe -- maybe I'm talking too much  
17           or I'm too close to the bench and that that's how  
18           her DNA got on there. But in truth, she doesn't  
19           know how her DNA got on there.

20           And what we do know is, that Teresa  
21           Halbach's DNA was right there at her bench, right  
22           underneath the same bench that she's working on,  
23           is her storage area. We talked about the central  
24           storage area for evidence. She checked it out in  
25           November. She never put it back until mid April,

1 I think it was.

2 And all that while, she's got Teresa  
3 Halbach's DNA, from the RAV4, in the cargo area,  
4 sitting right there on her bench. That's a bad  
5 practice right there. But when you get a  
6 contaminated control, you can't tell how and  
7 whether Teresa Halbach's DNA ended up there in  
8 the same extraction mechanism that she's doing or  
9 not. You just can't tell.

10 And their own logs, their own  
11 contamination logs that I introduced, talk about  
12 how difficult it is. We went through it. I  
13 won't go through it again with you. But there  
14 are instances in here where it specifically says,  
15 evidence from one case has been contaminated into  
16 another.

17 And they look and they try and figure  
18 out why, corrective measures. And they can't  
19 figure it out. They can't figure it out. So how  
20 are we supposed to figure it out? How are you  
21 supposed to figure it out? You can't. And  
22 that's why the protocol says, you toss it out and  
23 you do it over.

24 Only she had a problem, because she had  
25 used it all up. She took a chance, rather than

1 trying to swab it, to put it in this buffer and  
2 dissolve it all. And she had a one shot, one  
3 chance with this DNA test. And when it came back  
4 contaminated, she was kind of stuck, you know,  
5 this was probative.

18 THE COURT: That's a good idea.

19 ATTORNEY BUTING: All right. Let me --  
20 There's one other area, though, where -- that we  
21 have to talk about, that Mr. Avery's DNA is found  
22 on. And that's the hood latch. But that's the most  
23 easy -- easiest to understand, really, because --  
24 First of all, note that it's not found until month's  
25 later, which means that it wasn't found in the first

1 sweep of the car that Sherry Culhane does.

2 And who followed Sherry Culhane into  
3 that vehicle, who's the next person? The first  
4 thing they do is DNA, so that no one is  
5 contaminating anything. Next one to come in is  
6 Mr. Stahlke, the blood spatter guy.

7 He admits he is leaning in, he's got his  
8 hands in there. He's touching. And I think he's  
9 even -- I don't remember if he admits actually  
10 touching the blood itself, but he's certainly all  
11 over the area where it was, with his gloves.

12 And then someone asked him to get the  
13 odometer reading. So he turns the key and  
14 there's nothing. So he realizes maybe the  
15 battery is dead. He comes around to the hood,  
16 and he said, he didn't change his gloves. And he  
17 opens the hood and, then, of course, sees the  
18 battery is disconnected. And they have to do  
19 something else to get the odometer reading.

20 But that's -- that's the problem with  
21 DNA, it's so easily translated -- or transferred  
22 in the environment. That's why you are supposed  
23 to peel off your gloves. And he didn't.

24 Let's move on to some of the other  
25 aspects of this case that are really peculiar.

1           How about a complete lack of any motive for  
2           Mr. Avery to kill Teresa Halbach. Why would he  
3           kill Teresa Halbach? It's a man who's wrongly  
4           incarcerated, spent years in prison. Gets out,  
5           has a good lawsuit pending; he's going to get a  
6           whole lot of money, in all likelihood. Why would  
7           he kill somebody? That makes no sense.

8                   First thing that leaps out at you when  
9           you heard about this charge, maybe more peculiar,  
10           is why Teresa Halbach? Why kill some woman that  
11           just comes over and takes pictures of your car  
12           four or five times? Why her?

13                   And just quickly, this theory that  
14           somehow he was luring her over by using the name  
15           B. Janda, is completely bogus, because the very  
16           same day, one of the other customers did the same  
17           thing. You give the name of the owner. Mr. -- I  
18           may have it backwards, Mr. Schmitz, I believe,  
19           called for -- Mr. Sippel called and left  
20           Mr. Schmitz's name because he's the owner and he  
21           was the one who was going to be there when the  
22           car was looked at.

23                   If he is really going to plan to kill  
24           Teresa Halbach, specifically, why not just call  
25           her on the cell phone? Why leave a paper trail?

1           Why call the office, you know, leave your  
2           address, Avery Road? I mean, hello, Avery Road,  
3           doesn't take a rocket scientist to trace it back  
4           to him.

5           And where was she killed? In the  
6           garage? We still don't know, from the State's  
7           theory. But think about this, maybe he's got  
8           some explanation he's going to come up with here,  
9           but if she's killed in the garage and she's  
10           burned in the burn pit, what's she doing in the  
11           back of the RAV4?

12           He put's her into the cargo area of the  
13           RAV4 so he can drive 20 feet around the other  
14           side of the building to take her out and put her  
15           into the burn pit? Makes no sense at all. It's  
16           another reason to suspect that that burn pit is  
17           not the original site of burning, because her  
18           body was very clearly inside that rear of that  
19           RAV4.

20           Why burn the phone, and the camcorder,  
21           and the -- or I'm sorry, the camera, and the palm  
22           pilot? Why burn those items in your own burn  
23           barrel? You are surrounded by quarries. You are  
24           out in a rural area. You have got 4,000 junk  
25           cars. You have crushed cars you can put it in.

1                   Why do you burn it? What's the point?  
2                   Get rid of it. It's easy to get rid of. Toss it  
3                   in one of the ponds. Bury it. No one is going  
4                   to find pieces of metal. Especially, again, if  
5                   after November 3rd and 4th, it's obvious, the  
6                   police are looking at you.

7                   Mr. Kratz says, the location of that car  
8                   tells us it was going to be crushed. And think  
9                   what would have happened if that car -- if  
10                  Patricia Sturm had not found that car on Saturday  
11                  afternoon, that car would have been crushed and  
12                  we would have lost that evidence forever.

13                  Well, ask yourself, why wasn't it  
14                  crushed, already? You got a crusher, I mean, you  
15                  got a crusher on your property. You got -- 54  
16                  cars are crushed there. It's obviously used all  
17                  the time. Why isn't it already crushed on  
18                  November 5th, especially if you know the cops are  
19                  looking at you? Common sense.

20                  And why try and build this complicated  
21                  outdoor fire to get rid of a body, when you have  
22                  got something like this on your property, that  
23                  can melt aluminum to liquid. Big enough, easily,  
24                  to do the job you need, if that's what you are  
25                  going to do. You would use that. But, of

1 course, that doesn't fit with the State's theory,  
2 because if you did use the smelter, you wouldn't  
3 move the bones back on your property.

4 All right. Let me talk about the FBI,  
5 Dr. LeBeau. I suggest he is not a credible  
6 witness. And more importantly, the test, for  
7 what it was used, for the opinions that were  
8 given, is not credible for that.

9 He gets the award for the most absurd  
10 expert opinion of anybody that's come into this  
11 courtroom and this trial. When he says, I can  
12 conclude to a reasonable degree of scientific  
13 evidence, that when I test those three items, and  
14 don't find EDTA, these other three items that I  
15 never bothered to test, they don't have EDTA  
16 either.

17 How can you ever make that kind of  
18 conclusion? That tells you how sloppy he is with  
19 his opinions, how willing he is to give them what  
20 they want.

21 Compare his testimony to Dr. Janine  
22 Arvizu, who was forthright, not dogmatic. She  
23 gave Mr. -- Dr. LeBeau his due. She agreed with  
24 him when he was right and pointed out where he  
25 was wrong.

Because the protocol says that this procedure allows for the screening and confirmation of EDTA in the suspected bloodstain. Doesn't say that you can then conclude, if you don't get it, that's it's not there. And the reason why is -- it took Dr. Arvizu to figure out, I certainly couldn't -- it's this whole idea of limit of detection.

23 It's the extraction process, where you  
24 are taking something out of the fabric or a swab,  
25 diluting it, extracting it and going through that

1                   whole process of filtering, that it becomes more  
2                   difficult. Your level of detection is now much  
3                   higher.

4                   In addition, the protocol was rushed.  
5                   Think about that. Think about how this whole  
6                   thing came about. The FBI has not tested for  
7                   EDTA in 10 years, since the O.J. Simpson case.  
8                   His explanation is, because no one asked. Think  
9                   about that. Why do you think no one asked?

10                  First of all, we can't ask for it, as  
11                  the defense, the defense bar. Only the  
12                  prosecution can ask for it. What did they do in  
13                  that case? They screwed it up. They found EDTA  
14                  and later argued, whether they were right or  
15                  wrong, we will never know, later claimed, oh,  
16                  that was just a carryover from a different  
17                  sample. Well, the jury was told that there was  
18                  EDTA in that case, look what happened.

19                  What prosecutor is going to trust them  
20                  to do this same kind of test and not screw up  
21                  their case? This prosecution team. Because they  
22                  were desperate to try and do something to  
23                  discredit the defense of planting, whatever it  
24                  took.

25                  And, so, when it normally takes three to

1                   four months to develop one of these protocols,  
2                   they suddenly come up with one in two weeks. And  
3                   they are testing it and validating it and  
4                   actually doing the test samples before, as  
5                   Dr. Arvizu said, before they even got their  
6                   results of their own competency tests from this  
7                   procedure.

8                   So why is the FBI involved in this case  
9                   at all? Again, this shows credibility, a lack of  
10                  it. They try to say, oh, we're concerned about  
11                  police misconduct. We want our public officials  
12                  to be truthful. And if there's some officer who  
13                  is planting, we want to know about it.

14                  Well, I asked them, what investigation  
15                  did you start? Where is the grand jury? What's  
16                  the U.S. attorney doing? Is there even any  
17                  investigator on the case from the whole FBI,  
18                  that's talked to any witness? No.

19                  All they have got is this lab that's  
20                  asked to do this new protocol and here's what  
21                  they are told. Purpose of this request is to  
22                  establish the presence of EDTA in the vial of  
23                  blood, thereby eliminating the allegation that  
24                  this vial was used to plant evidence. That's it.

25                  It's not to find out whether these cops are

corrupt. It's to eliminate the defense. So are we surprised at the results? I'm certainly not.

The real reason the FBI got involved in this case is because Mr. Avery had the audacity, and, you know, this is what I'm going to hear, probably, how dare he accuse these fine officers and besmirch their reputations.

And when that happens, they circle the wagons. Cops, when they get accused of misconduct, they circle the wagons. That's the code of silence, or that's the bond they have. And that's why Calumet and DCI were so quick to jump on the bandwagon, when Lenk and Colborn were professing they did nothing wrong. They had nothing to do with this. And Lenk and Colborn probably counted on that.

Quickly, a couple of other peculiar things about the timeline. The -- Bobby Dassey says that he sees Teresa Halbach at 2:45, he leaves at three, and the vehicle is still there, something like that. He has no good way of verifying the time, but he tells the officer, talk to Scott Tadych -- Tadych, he can tell you precisely, is the word he used, precisely what time it was.

1                   Well, how does he know that Tadych can  
2 tell precisely what time it was that he  
3 supposedly is being seen, unless the two of them  
4 maybe got together, talked about a story they had  
5 come up with.

6                   Remember, those two people, unlike  
7 anybody else that was asked about an alibi and  
8 maybe weren't, but those two people alibied  
9 themselves. Without each other, there is no  
10 alibi for either one of them. Nobody sees Dassey  
11 go hunting in the woods. Taking a shower, by the  
12 way, before he goes off hunting, like his Irish  
13 Spring soap is going to help attract deer. Come  
14 on.

15                  And he goes there so that -- he wants to  
16 get there before dusk, because that's when the  
17 deer feed. I'm not a hunter, but we know what  
18 time he left and came home. It was well before  
19 dusk, he is home at 5. That doesn't make sense.

20                  More importantly, Lisa Buchner, the  
21 school bus driver, is a completely disinterested  
22 party and she does have a reason to know the  
23 time, precisely, because she has got a regular  
24 route that she drives, 3:30 to 3:40 every day.  
25 School lets out 3:05. She's drives, drops the

1           people off. She's dropping those Dassey boys off  
2           at that time.

3           What does she say? She says she saw a  
4           woman taking pictures of a van. Now, how many  
5           women are out there taking pictures of a van at  
6           that same time period. She's honest and says I  
7           don't remember if it was Monday, the 31st,  
8           Tuesday, the 1st, or Wednesday, November 2nd.  
9           That's what she tells Investigator Wiegert on  
10           November 7th, just one week afterwards now, when  
11           it's fresh in mind.

12           And she's so concerned about it, she  
13           went to the barricades on November 5th and said,  
14           hey, I think I saw her. I think I saw her. I  
15           don't remember what day but, you know. That's  
16           what she describes, this woman taking pictures.  
17           The State, 16, 17 months later, is able to  
18           confuse her, and say, well, yeah, maybe it was a  
19           week earlier, maybe it was a couple weeks  
20           earlier, but that's not what she said when it was  
21           fresh in her mind.

22           The State will argue that the location  
23           wasn't right. She said she saw someone taking --  
24           she saw her taking the pictures of something down  
25           around the turn around circle. And it's true,

1                   that's not where Barb Janda's car was, or this  
2                   van was. It was up the road a ways. Well,  
3                   either she's mistaken about that or -- and I  
4                   submit this is a very real possibility -- she is  
5                   doing a hustle shot, because she's been flagged  
6                   down on her way out and asked to take another  
7                   picture. By who?

8                   We know it's happened before. We have  
9                   evidence. Angela Schuster said, just a few weeks  
10                  earlier, Tom Janda had flagged her down and taken  
11                  a hustle shot, on the way out.

12                  And John Leurquin, the propane driver,  
13                  yeah, he's not as certain, but he does  
14                  corroborate Lisa Buchner in that he sees this  
15                  green SUV around the same time. He doesn't know  
16                  who's driving, and maybe it wasn't Teresa Halbach  
17                  at that point. This person who was hustling a  
18                  shot perhaps, was driving away with. But he  
19                  recalled it because it was different, wasn't the  
20                  usual regular vehicles that he always sees.

21                  So when the State tells you that Bobby  
22                  Dassey is this credible witness, who's the last  
23                  person to see Teresa Halbach alive, maybe he's  
24                  right, if he's the killer. Or Scott Tadych, his  
25                  only alibi. He tells him --

1 ATTORNEY KRATZ: Judge, I'm sorry, I'm  
2 going to interpose an objection on third party  
3 liability. I would like to be heard.

4 ATTORNEY BUTING: I will rephrase that. I  
5 will withdraw that.

6 ATTORNEY KRATZ: I don't want it rephrased,  
7 I want to be heard.

10 ATTORNEY KRATZ: Thank you, Judge.

11 ATTORNEY BUTING: Police, when they  
12 interview Mr. Dassey, just accept his story,  
13 unquestioning -- unquestioningly. And they accept  
14 Mr. Tadych's story. They don't go check out his  
15 alibi for later, where he says he is visiting his  
16 mother at the hospital. Well, where is the proof of  
17 that?

25 Do you still want to be heard or?

THE COURT: You can continue.

2 ATTORNEY BUTING: All right. I will talk  
3 briefly about the other, since Mr. Kratz said that  
4 these -- Mr. Fassbender and Wiegert were  
5 investigating, parallel, these other suspects,  
6 including the boyfriends, ex-boyfriends, whatever,  
7 but look at what they did. They admit that, yeah,  
8 sure, Mr. Avery may be a suspect or a person of  
9 interest because we know he was one of the people  
10 who saw her on the last day.

11                           But who else saw her on the last day,  
12                           George Zipperer, and look how he behaved. Mr.  
13                           Avery says, come on in, very cooperative.  
14                           Zipperer is belligerent. But we didn't know  
15                           that.

16 Hillegas, former boyfriend, no alibi,  
17 didn't even ask him.

18                   Male roommate, Mr. Bloedorn, who doesn't  
19                   report her missing for four days. What's up with  
20                   that? Don't ask him for an alibi. Where was he?

21 Bradley Czech, male friend with a little  
22 bit more personal relationship with her, perhaps.  
23 Again, no alibis checked.

1                   All of these roles that these people  
2 play, the officers admitted would normally, in a  
3 normal missing person or homicide investigation,  
4 be considered possible suspects that you would at  
5 least look at and check out, but not here.

6                   And what about all the other people on  
7 the Avery property on October 31st? What's up  
8 with that? Where are their alibis? Customers  
9 and other people who work and live there.

10                  And, interestingly, going quickly back  
11 to this hustle shot for a minute, I asked, you  
12 know, you think maybe -- well, of course, if she  
13 was flagged down, there wouldn't be any record in  
14 her palm pilot.

15                  But if it was a different kind of hustle  
16 shot that she was on her way to go do, the FBI  
17 technician, or whatever, that came here and  
18 talked about the electronics, said that he might  
19 have been able to recover that kind of data from  
20 the palm pilot, but wasn't asked to. They were  
21 concerned about him trying to prove that it was  
22 Teresa Halbach's palm pilot, not what was on it.

23                  And, then, there's what I consider the  
24 mysterious part of Teresa Halbach's life. And I  
25 mean no disrespect to the Halbach's family,

1                   whatsoever, when I say this. But Teresa had her  
2                   own private life. We know that. She had at  
3                   least three circles of friends, I think it was  
4                   described: Her family, people that she worked  
5                   with in the community, marketing and whatnot, and  
6                   the Green Bay friends.

7                   And apparently they didn't intersect  
8                   very much. Because she's missing for four days  
9                   before anyone reports it. And maybe most  
10                   interestingly is, we know that on Saturday night  
11                   she was out, with somebody, or she was -- I can't  
12                   say she was out with somebody, but we know that  
13                   she went out, some Halloween party somewhere,  
14                   bar, wherever, in Green Bay area is what  
15                   Mr. Hillegas, I think, said he thought, or maybe  
16                   Mike Halbach.

17                   And yet, despite all those fliers that  
18                   were sent around, all over the state, thousands  
19                   of them, not one person has come forward to say I  
20                   was with her Saturday night. Something is weird  
21                   about that. Especially when you combine it -- I  
22                   believe Mr. Pearce, I may be misquoting him, but  
23                   I believe he, at one point, had some thought that  
24                   maybe she had met somebody on the weekend and  
25                   that's where she was and why she wasn't showing

1 up.

2                   But then we have the weird thing about  
3 the voice mail. Why did the police not follow up  
4 on this. We were not confused about these  
5 records, but I'm glad that Mr. Zimmerman was able  
6 to enlighten us, that the messages that are on  
7 this exhibit, 372, 18 of them, would not  
8 constitute a full mailbox. He said that very  
9 clearly.

10                  And what he said was, when I asked him  
11 if this -- if this persons account was sending  
12 out a message when you called, that said mailbox  
13 is full, would something more have to be on it  
14 than what's on these records. And he said, yes.  
15 And he said that, yes, that meant something had  
16 to have been erased. Something on her voice mail  
17 was erased by somebody.

18                  And to do that, you would have to have  
19 her password. And I'm not at all accusing the  
20 Halbachs of that. But somebody else close, that  
21 had her password, and for some reason thought it  
22 necessary to erase a message. What was so  
23 important on her voice mail, or perhaps so  
24 incriminating on her voice mail, that would  
25 necessitate somebody, close enough to her that

1 has her password, erasing one or more messages.

2 These are all reasonable doubts, ladies  
3 and gentlemen. These are all questions that  
4 police and law enforcement ignored, because it  
5 points away from Steven Avery, who wouldn't have  
6 had her password and points to someone else.

7 Mr. Strang will finish up and give you a  
8 little bigger picture in a moment, but I'm  
9 confident that you are going to find more than  
10 reasonable doubt and find Mr. Avery not guilty.

11 Thank you.

12 THE COURT: All right. Members of the  
13 jury, we're going to take a break at this time. I'm  
14 going to talk to the attorneys about scheduling.  
15 Again, do not discuss this matter during the break.  
16 We'll call you back shortly.

17 (Jury not present.)

18 THE COURT: You may be seated. First of  
19 all, Mr. Kratz, I will hear your objection at this  
20 time.

21 ATTORNEY KRATZ: Thank you, Judge. This  
22 Court has entered numerous pre-trial rulings for  
23 which Mr. Buting was a party. One of those  
24 pre-trial rulings prohibited any reference to a  
25 possible third party, that is, a killer, other than